IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

CAROLINE REED, Administratrix of the Estate of Gary Reed, deceased,	:	APPEAL NOS. C-110101 C-110078
	:	TRIAL NO. A-0904537
Plaintiff-Appellant/Cross-Appellee,	:	JUDGMENT ENTRY.
vs.	:	
NICHOLAS E. BOSCHERT,	:	
Defendant-Appellee/Cross-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

On a clear Saturday afternoon in April, the vehicle being driven by defendant-appellee/cross-appellant Nicholas Boschert broke down in the middle of west-bound Ft. Washington Way. He tried several times, but was unable, to restart the car. He was able to get out of the car and walk to the side of the road. From there he telephoned his wife to get the contact information for AAA. While on the side of the road, Boschert saw that cars, which had been stopped behind his vehicle, were beginning to maneuver around it. His vehicle was then struck by decedent Gary Reed, who was operating a motorcycle. A total of three minutes elapsed between when the vehicle first stalled and when the accident occurred.

The trial court found that Reed was negligent per se for violating the assured clear distance statute, but found that there was an issue of fact as to whether Boschert was negligent in failing to better warn motorists that his vehicle was stalled in the roadway. Thus, the trial court granted Boschert's motion for summary

judgment, but denied the motion filed by plaintiff-appellant/cross-appellee Caroline Reed, administratrix of the estate of Gary Reed. Both parties have appealed.

After a review of the record, we conclude that the appeal in this case is premature. The denial of a motion for summary judgment is not a final, appealable order. See *Stevens v. Ackman* (2001), 91 Ohio St.3d 182, 186, 2001-Ohio-249, 743 N.E.2d 901. Further, unless the order affects a substantial right, it is not a final order. An order which affects a substantial right is perceived to be one which, if not immediately appealable, would foreclose appropriate relief in the future. *DeAscentis v. Margello*, 10th Dist. No. 04AP-4, 2005-Ohio-1520, ¶18-19.

In this case, while the trial court has determined that Reed was negligent per se, the issue of Boschert's negligence, if any, has not been decided. Further, while Reed may have been negligent, a jury may apportion fault in such a way that his negligence does not foreclose recovery. The decision of the trial court is not one which, if not immediately appealable, would foreclose appropriate relief in the future.

Because the decision of the trial court was not a final, appealable order, this court lacks jurisdiction to entertain the appeals. The appeals are, therefore, dismissed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., SUNDERMANN and **FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on November 23, 2011

per order of the Court _____.

Presiding Judge